

LENIHAN, IVERS, JENSEN & MCATEER
ATTORNEYS AT LAW
1114 NORTON BUILDING
SEATTLE, WASHINGTON 98104

October 26, 1970

Mr. Robert Mossman
J. H. Baxter & Co.
1700 South El Camino Real
San Mateo, California 94402

Re: Reilly Property

Dear Bob:

Enclosed please find a draft of agreement submitted by Gene Brandzel for consideration. You will note that the major changes from our last draft concern the problem of plant site condition. This draft requires that a representative of both parties view the properties, ascertain if it is suitable, and advise the seller relative to this point. This will enable the parties to ascertain all patent defects and determine if they are acceptable. The language of the provision indicates that if they are not acceptable, the deal is off. This indicates that there is no recourse as to any damages rendered by the contractor to the plant site. We have to accept the plant site as it is at this date. This, unless Reilly should agree to modify to the contrary, will control.

There are other changes, mostly clarification of language and expressions of intent, so as to make the agreement more specific as to these points. Generally, I have found these changes to be acceptable and reasonable. However, I invite you to compare these provisions with the last draft so that you note the several language changes.

Very truly yours,

LENIHAN, IVERS, JENSEN & MCATEER

By
JAMES C. HANKEN

JCH/nb

cc: Gene B. Brandzel ✓
Alex Cugini
Don Norman

R 200263

*Superseded by
11/9/70
agreement*

October 26, 1970

Mr. Robert Mossman
J. H. Baxter & Company
1700 South El Camino Real
San Mateo, California

Dear BobL

I am enclosing the original and two copies of the Agreement that both of our attorneys seem to feel is finally in proper form.

Due to the time that has been consumed, should there be any questions on your part, would you 'phone me so they can be resolved.

Our attorney, Mr. Brandzel, has asked that you forward the signed original to his office.

Very truly yours,

REILLY TAR & CHEMICAL CORPORATION

T. J. Ryan
Vice President

TJR:LS

Encl.

R 200264

A G R E E M E N T

THIS AGREEMENT, entered into this 26th day of October, 1970, between J. H. BAXTER & CO., a California corporation, hereinafter called "Purchaser," and REILLY TAR & CHEMICAL CORPORATION, an Indiana corporation, hereinafter called "Seller;"

W I T N E S S E T H:

WHEREAS, Seller is the successor of Republic Creosoting Company, an Indiana corporation, and is the owner of certain real property in the Kennydale, Washington, area which was formerly the site of Seller's coal tar base creosote plant; and

WHEREAS, J. H. BAXTER & CO. has conducted an extensive and intensive examination of the subject property, including, but not limited to, existing tankage, associated buildings, two (2) piers and the real property itself; and

WHEREAS, Purchaser has completed its inspection and desires to acquire and Seller desires to convey, the subject property upon the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, Seller agrees to sell to and Purchaser agrees to purchase from Seller the property hereinafter described, under the following terms and conditions:

1. Description of Assets. The assets which are the subject of this Agreement consist of the real property described on Schedule "A", attached hereto and by this reference made a part hereof as if set forth in full, together with the improvements located thereon set forth on Schedule "B", attached hereto and by this reference made a part hereof as if set forth in full.

2. Purchase Price. The purchase price is Five Hundred Thousand Dollars (\$500,000.00), allocated Two Hundred and Fifty

Thousand Dollars (\$250,000.00) for the land, and Two Hundred and Fifty Thousand Dollars (\$250,000.00) for the improvements located thereon in accordance with the itemization of price set forth in Schedule "B" hereto.

3. Payment of Purchase Price. The purchase price shall be paid as follows:

(a) Upon closing Purchaser shall pay One Hundred Thousand Dollars (\$100,000.00), and

(b) The balance of the purchase price shall be evidenced by a promissory note executed by the Purchaser, together with a first deed of trust on the subject property. The said promissory note shall require payment in four (4) equal annual installments, commencing one (1) year from the date of closing. The interest rate shall be 7 1/2 per cent per annum. Under the terms of said note, payment shall be applied first to the accrued interest, and the balance of each payment shall be applied to reduction of the principal. Payments shall be made to Seller at 1615 Merchants Bank Building, Indianapolis, Indiana 46204.

(c) The promissory note and deed of trust shall be in the form and manner attached hereto as Schedules "C" and "D", respectively.

4. Conditions of Sale. Within fifteen (15) days after the date of this Agreement, Purchaser shall obtain a report, in standard form, preliminary to an owner's policy of title insurance, issued by Trans-America Title Insurance Company. Within ten (10) days after receipt of said report, if Purchaser shall determine title to be unacceptable, Purchaser shall have the option of terminating this Agreement in its entirety. This option must be exercised in writing and delivered to the place and in the manner elsewhere provided herein for the giving of notices. If Purchaser

fails to exercise his option to terminate as provided herein, said option shall lapse, and Purchaser shall be bound to proceed, subject only to the other conditions stated herein.

Prior to the closing date, Purchaser shall have obtained a firm commitment for the lease of the subject property for the storage of hydro-carbon and/or petroleum products on said premises at such terms and under such conditions as are acceptable to Purchaser. In addition thereto, prior to closing, Purchaser shall have secured the necessary approval of the City of Renton and/or other necessary governmental agencies to operate or lease for operation such a storage facility. Purchaser agrees to use its best efforts to accomplish both of these conditions. Should Purchaser fail in either of these conditions prior to the date of closing, Purchaser may waive these conditions and proceed with the purchase under the other terms hereof, or terminate this agreement in its entirety. Said election shall be made by Purchaser in writing to Seller, prior to the closing date in the manner hereinafter specified for the giving of notices.

5. Representations and Warranties.

(a) Seller and Purchaser represent that they are duly organized, validly existing corporations, fully authorized to enter into this Agreement and to consummate the transactions described herein.

(b) Seller agrees that in the event there are any claimed mechanics' or materialmen's liens, arising prior to closing, against the subject real property at or after the time of closing, Seller will hold Purchaser harmless therefrom.

(c) No other representations or warranties have been made by the Seller, or anyone in its behalf, to the Purchaser, or anyone in its behalf, as to the condition of the subject property, except as expressly provided in Paragraph 6 hereof, including but not limited to the

tankage and the two (2) piers hereinbefore described, or any other items described in Schedule "B". IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY DESCRIBED IN SCHEDULES "A" AND "B" IS SOLD "AS IS." WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, SELLER PARTICULARLY DISCLAIMS ALL AND ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE FITNESS OF THE PIERS AND TANKAGE FOR ANY PARTICULAR USE.

6. Care of Property Pending Closing. Seller and Purchaser agree that between October 26, 1970 and October 30, 1970 they will, at a mutually convenient time, jointly inspect the subject property. Before 5:00 P.M. Pacific Standard Time, on November 2, 1970, Purchaser shall advise Seller in writing whether the subject property is in a state suitable to Purchaser. If Seller does not receive notice of Purchaser's written, unconditional acceptance of the state of the subject property as of the date of the joint inspection, this agreement shall be automatically terminated. Seller agrees to keep the subject property substantially in the state it is in at the time of the aforescribed joint inspection up to the date of closing.

In the event, prior to the closing date, the items described in Schedule "B", or any of them, are substantially damaged or destroyed by fire or other casualty, Purchaser and Seller shall each have the option of terminating this agreement. In the event of termination, both parties shall be fully released from all obligations hereunder. Notice of termination shall be given in writing and in the manner hereinafter described for the giving of notices.

7. Restriction on Assignability or Sale of Property. This Agreement may be assigned by Purchaser; however, as a condition precedent to the effectiveness of any such assignment, Purchaser shall deliver to Seller a written guarantee by Purchaser and Barbee Mills,

Inc., a Washington corporation, jointly and severally, as to the performance of the terms and conditions of this agreement, said deed of trust and said promissory note.

8. Closing.

(a) Date, Place and Time. The closing of this transaction shall take place at 10:00 a.m., Pacific Standard Time, on December 15, 1970, at the main offices of Trans-America Title Insurance Company, Seattle, Washington, hereinafter called "the closing agent." Said date is herein called "the closing date."

(b) Purchaser, upon the satisfaction of all the conditions contained herein, may advance closing by depositing in escrow with the closing agent all instruments and monies necessary to complete the purchase in accordance with this Agreement. Seller shall have ten (10) days from written notice of said deposit to complete its obligation. Title to the subject property shall be conveyed by quit claim deed, together with such assignments and other instruments of conveyance as are in accordance with the provisions of this Agreement, and which are effective to vest in Purchaser all of Seller's title to all the properties and assets to be transferred to Purchaser by Seller hereunder. Purchaser agrees to properly execute and deliver the promissory note and deed of trust, hereinbefore described, together with such other instruments, including but not limited to a written termination of the lease between Seller and Purchaser to a portion of the subject real property, as is necessary to effectuate the provisions of this Agreement. Said deed of trust shall be a first lien on the subject property, subject only to those leases outstanding as of this date and such exceptions as appear in the preliminary commitment for title insurance described in paragraph 4 hereof. In the event the transaction does not close and Purchaser has performed all its obligations under this Agreement, after closing date Purchaser shall be entitled to withdraw the monies it deposited into escrow.

(c) Title Policy. Seller shall make available to Purchaser at time of closing a standard form of owner's policy of title insurance issued by Trans-America Title Insurance Co. Said title policy shall contain no exceptions other than those provided for in said standard form and those noted in the preliminary report described in paragraph 4 hereof.

(d) Payment of Costs. Upon closing, Seller shall pay the costs of state revenue stamps, the premium for the aforescribed title insurance policy and the one per cent real estate excise tax on this transaction. Upon closing, all costs of recording and all state sales tax (if any) on personal property included in Schedule "B" shall be paid by Purchaser. Real estate taxes for the current year 1970 shall be prorated as of the date of this Agreement. The cost of escrow shall be paid one-half (1/2) each by Seller and Purchaser.

9. No Broker or Finder. Purchaser and Seller each represent that it has not retained any broker or finder in connection with the transactions contemplated in this Agreement.

10. Notices. All notices to be given by any party to this Agreement to any other party hereto shall be in writing. Any notice to be given to Purchaser shall be given by personal delivery to the President or the Secretary of Purchaser or by depositing such notice in the United States mails, postage prepaid, addressed to Purchaser at 1700 South El Camino Real, San Mateo, California 94402, to the attention of Mr. Robert Mossman. Any notice to be given to Seller may be given by personal delivery to the President of Seller or by depositing such notice in the United States mails, postage prepaid, addressed to Seller at 1615 Merchants Bank Building, Indianapolis, Indiana 46204, to the attention of Mr. Thomas Ryan.

11. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary arrangements. This Agreement may not be changed except in writing executed by the parties hereto.

12. Counterparts. This Agreement or any amendments thereto may be executed in counterparts and any number of counterparts in the aggregate shall constitute a single original instrument.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

14. Seller's Assistance. Seller agrees to assist and cooperate with Purchaser in obtaining all necessary approvals and consents to assignment of all leases, permits, licenses and /or other rights held by Seller which relate to the subject property. Expenses incurred by Seller in so assisting and cooperating shall be borne by Purchaser.

15. Possession. Purchaser shall be entitled to possession on the day following closing.

THIS AGREEMENT is hereby executed on the day and year first written above.

J. H. BAXTER & CO.

By _____ President

By _____ Secretary

"PURCHASER"

REILLY TAR & CHEMICAL CORPORATION

By _____ President

By _____ Secretary

"SELLER"

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1970, before me personally appeared _____ and _____ to me known to be the President and Secretary respectively of J. H. BAXTER & CO., the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
California, residing at _____.

STATE OF INDIANA)
) ss.
COUNTY OF Marion)

On this 26th day of October, 1970, before me personally appeared Peter C. Reilly and Robert J. Boyle, to me known to be the President and Secretary respectively of REILLY TAR & CHEMICAL CORPORATION, the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Veronica M. Bledsoe
Notary Public in and for the State of
Indiana, residing at Indianapolis.

VERONICA M. BLEDSOE
My Commission Expires Jan. 29, 1974

SCHEDULE "A"

DESCRIPTION
REILLY TAR & CHEMICAL CORPORATION PROPERTY

That portion of Government Lot 5 in Section 29, Township 24 North, Range 5 East, W.M. and shoreland adjoining lying Westerly of the Northern Pacific Railroad Right of Way and Southerly of a line described as follows:

Beginning at the quarter corner on the South line of said Section 29; thence North 89°58'36" West along the South line of said Lot 5 1,113.01 feet to the Westerly line of said Northern Pacific Railroad Right of Way; thence North 29°44'54" East 849.62 feet along said Right of Way line to a point hereinafter referred to as Point A; thence continuing North 29°44'54" East 200.01 feet to the true point of beginning of the line herein described; thence South 56°28'50" West 222.32 feet to a point which bears North 59°24'56" West 100.01 feet from said Point A; thence North 59°24'56" West to the inner harbor line and the end of said line description; Also that portion of said Government Lot 5 lying Southeasterly of Lake Washington Boulevard, Westerly of Secondary State Highway Number 2A and Northwesterly of the Right of Way of Public State Highway Number 1 as established by deed recorded under Auditor's File No. 5687408, containing 31.7 acres more or less (accuracy to one acre) of which 12.8 acres are underwater shorelands.

The Harbor Area Lease dated the 30th day of November, 1943, between the Port of Seattle and Peter C. Reilly for that area between the inner and outer harbor lines lying adjacent to the area described above in Lake Washington.

All rights and interest in and to that certain lease between Foss Tug & Barge for booming and rafting of logs on Lake Washington dated the 1st day of December, 1962, between Reilly Tar & Chemical and Foss Tug & Barge.

All rights and permits, if any, from the Army Corps of Engineers for placing and locating structures, wharves, dolphins, piers and other devices that are in interference with navigation and require permits from the Army Corps of Engineers located in that area described in the Harbor Area Lease referred to above.

SCHEDULE "B"

Reference Republic Creosoting Co. Drwg. #22M-1, Dated 3/27/1958
including revisions to 11/9/69, attached hereto and by
this reference incorporated herein

Improvements to remain are as follows:

a.	Office structure immediately northeast of Tank #1	\$ 2,500.00
b.	Pier and Equipment #18	25,000.00
c.	Pier and Equipment #19	7,500.00
d.	Pump and House #20	1,000.00
e.	Tanks Appurtenances and Equipment #23	72,500.00
f.	Tanks Appurtenances and Equipment #26	72,500.00
g.	Tanks Appurtenances and Equipment #31	1,000.00
h.	Tanks Appurtenances and Equipment #32	1,000.00
i.	Tanks Appurtenances and Equipment #33	1,000.00
j.	Tanks Appurtenances and Equipment #34	1,000.00
k.	Tanks Appurtenances and Equipment #35	7,500.00
l.	Tanks Appurtenances and Equipment #36	7,500.00
m.	Tanks Appurtenances and Equipment #37	20,000.00
n.	Tanks Appurtenances and Equipment #38	20,000.00
o.	Building & Equipment #40 (Less Pump)	500.00
p.	Building & Equipment #41	500.00
q.	All equipment improvements and natural growth, including trees in sectors 1, 2, 5, 6, as shown on drawing referred to above. It is expressly understood that improvements no. 5, 7, 14, 22, 28 and 86 are to be removed.	1,000.00
r.	Water line extending from Building 40 to Building #2 and attached risers, hydrants, etc., including laterals	3,000.00
s.	4" product lines from immediately north of Tank #1 with attachments to and including rail loading/ unloading facility	4,000.00
t.	Two (2) pumps from Building #2 to be left on site	1,000.00

SCHEDULE "C"

PROMISSORY NOTE

\$ _____

_____, 1970
Seattle, Washington

FOR VALUE RECEIVED, J. H. BAXTER & CO. promises to pay the sum of FOUR HUNDRED THOUSAND and no/100 Dollars (\$400,000.00) with interest thereon at the rate of seven and one-half percent (7 1/2%) per annum from the date hereof, to REILLY TAR & CHEMICAL CORPORATION, or its order, payable as follows:

Four equal annual installments, commencing one year from the date of this note with payments to be applied first to the accrued interest, and the balance of each payment to be applied to the reduction of principal.

If any of said installments are not so paid, the whole sum of both principal and interest shall become due and payable at once without further notice at the option of the holder thereof.

This note shall bear interest at the rate of twelve percent (12%) per annum after maturity or after failure to pay any installment as above specified, and if this note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the principal or interest of this note, we promise to pay a reasonable attorney's fee, in addition to all other amounts provided for herein on any such instance.

J. H. BAXTER & CO.

By _____

By _____